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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 NICOLE BROWN-BOOKER
15 and JANA OVERBO,

CASE NO.
Civil Rights

007-04397 EMC

16 Plaintiffs,

17 v.

18 APPLE, INC.; DEKA
19 IMMOBILIEN INVESTMENT
20 GMBH, LLC; and DOES 1-10,
21 Inclusive,

22 Defendants.

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF
AND DAMAGES: DENIAL OF CIVIL
RIGHTS AND ACCESS TO PUBLIC
FACILITIES TO PHYSICALLY
DISABLED PERSONS, AND PER
CALIFORNIA STATUTES (INCLUDING
(CIVIL CODE §§ 51, 52, 54, 54.1, 54.3,
AND §55; and HEALTH & SAFETY
CODE §§19955, *et seq.*); INJUNCTIVE
RELIEF PER TITLE III, AMERICANS
WITH DISABILITIES ACT OF 1990

DEMAND FOR JURY TRIAL

23 Plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO
24 complain of Defendants APPLE, INC.; DEKA IMMOBILIEN INVESTMENT
25 GMBH, LLC; and DOES 1-10, Inclusive, and each of them, and allege as follows:

26 1. INTRODUCTION: This case involves the denial of accessible
27 sales establishment facilities, including denial of accessible entrance, path of
28 travel, teaching theater seating, elevator, and restroom facilities, to plaintiffs

1 NICOLE BROWN-BOOKER and JANA OVERBO and other disabled persons at
 2 the Apple Store, located at One Stockton Street, San Francisco, California.
 3 Plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO are each a "person
 4 with a disability" or "physically handicapped person." Plaintiffs require the use
 5 of a motorized wheelchair for locomotion and are unable to use portions of public
 6 facilities which are not accessible to disabled persons who require the use of a
 7 wheelchair. On or about May 12, 2007 and July 28, 2007, plaintiffs were denied
 8 their rights to full and equal access at these facilities, and were denied their civil
 9 rights under both California law and federal law, as hereinbelow described,
 10 because these facilities were not, and are not now, properly accessible to
 11 physically disabled persons who use wheelchairs. Plaintiffs seek injunctive relief
 12 to require defendants to make these facilities accessible to disabled persons and to
 13 ensure that any disabled person who attempts to use the facilities will be provided
 14 accessible entry, paths of travel, display counters, elevator buttons, "teaching
 15 theater" seating, "genius bar" service, checkout counters, and accessible and
 16 usable sanitary facilities. Plaintiffs also seek recovery of damages for their
 17 discriminatory experiences, and denial of access and of their civil rights, which
 18 denial is continuing as a result of defendants' failure and refusal to provide
 19 disabled accessible facilities. Plaintiffs also seek recovery of reasonable attorney
 20 fees, litigation expenses and costs, according to statute.

21 **2. JURISDICTION:** This Court has jurisdiction of this action
 22 pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act
 23 of 1990, 42 USC 12101, *et seq.* Pursuant to pendant jurisdiction, attendant and
 24 related causes of action arising from the same facts are also brought under
 25 California law, including but not limited to violations of California Government
 26 Code §4450, *et. seq.*; Health & Safety Code §19955, *et seq.*, including §19959;
 27 Title 24 California Code of Regulations; and California Civil Code §§ 51, 52, 54,
 28 54.1, 54.3 and 55.

1 3. **VENUE:** Venue is proper in this court pursuant to 28 USC 1391(b)
 2 and is founded on the fact that the real property which is the subject of this action
 3 is located in this district and that plaintiffs' causes of action arose in this district.

4 4. **INTRADISTRICT:** This case should be assigned to the
 5 Oakland/San Francisco intradistrict as the real property which is the subject of
 6 this action is located in this intradistrict and plaintiffs' causes of action arose in
 7 this intradistrict.

8 5. **PARTIES:** Plaintiffs Nikki Brown Booker and Jana Overbo are each
 9 qualified physically disabled persons who cannot walk and who require use of a
 10 motorized wheelchair for locomotion. Defendants Apple, Inc., Deka Immobilien
 11 Investment GMBH LLC, and Does 1-10, Inclusive, are the owners, operators,
 12 lessors, and lessees of the business, property, building and/or portions thereof
 13 located at One Stockton Street, San Francisco, California. This sales
 14 establishment, the Apple Store (hereinafter also "Store"), is a "public
 15 accommodation and business establishment" subject to the requirements of
 16 California Health & Safety Code §19955 *et seq.* and of California Civil Code §§
 17 51, 54, *et seq.* Such facilities have, since July 1, 1970, undergone construction
 18 and/or "alterations, structural repairs, or additions" subjecting such building to
 19 disabled access requirements per Health & Safety Code §§ 19955-19959, *et seq.*
 20 Such alterations since July 1, 1982 also subjected the building to requirements of
 21 California's Title 24, the State Building Code. Further, irrespective of the
 22 alteration history, such premises are subject to the "readily achievable" barrier
 23 removal requirements of Title III of the Americans With Disabilities Act of 1990.

24 6. The true names and capacities of Defendants Does 1 through 10,
 25 Inclusive, are unknown to plaintiffs who therefore sue said defendants by such
 26 fictitious names. Plaintiffs are informed and believe that each of the defendants
 27 herein designated as a Doe is legally responsible in some manner for the events
 28 and happenings herein referred to and caused injury and damages proximately

1 thereby to plaintiffs; plaintiffs pray leave of Court to amend this Complaint to
2 show such true names and capacities when the same have been ascertained.

3 7. Defendants Apple Inc., Deka Immobilien Investment GMBH LLC, and
4 Does 1-10, Inclusive, are and were the owners, operators, lessors and lessees of
5 the subject business, property and/or building at all times relevant to this
6 Complaint. Plaintiffs are informed and believe that each of the defendants herein
7 is the agent, employee or representative of each of the other defendants, and
8 performed all acts and omissions stated herein within the scope of such agency or
9 employment or representative capacity and is responsible in some manner for the
10 acts and omissions of the other defendants in proximately causing the damages
11 complained of herein.

12
13 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF**
14 **FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC**
15 **ACCOMMODATION: PUBLIC FACILITIES IN A PUBLIC FACILITY**
(California Health & Safety Code §§ 19955, *Et Seq.*, Civil Code §54.1)

16 8. Plaintiffs replead and incorporate by reference, as if fully set forth
17 again herein, the factual allegations contained in Paragraphs 1 through 7, above,
18 and incorporate them herein by reference as if separately repled hereafter.

19 9. Plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO and
20 other similarly situated physically disabled persons who require the use of a
21 wheelchair are unable to use public facilities on a "full and equal" basis unless
22 each such facility is in compliance with the provisions of California Health &
23 Safety Code §§ 19955, *et seq.* Plaintiffs are members of that portion of the public
24 whose rights are protected by the provisions of Health & Safety Code §§ 19955,
25 *et seq.*

26 10. Health & Safety Code §§ 19955 and 19955.5 were enacted "To
27 ensure that public accommodations or facilities constructed in this state with
28 private funds adhere to the provisions of Chapter 7 (commencing with Section

4450) of Division 5 of Title 1 of the Government Code.” The Government Code sections enacted in 1968 required provision of access in government buildings upon new construction or alteration. In 1970 California Health & Safety Code §§ 19955-19959 applied these standards to privately owned public accommodations. On information and belief the provisions of both Health and Safety Code §§ 19955 and 19955.5, apply to the sales establishment located at One Stockton Street, San Francisco, California. The code relating to such public accommodations also requires that “When sanitary facilities are made available for the public, clients, or employees ..., they shall be made available for persons with disabilities.” Title 24, California Code of Regulations, formerly known as the California Administrative Code, was in effect at the time of each alteration which, on information and belief, occurred at such public facility since July 1, 1982, thus requiring access complying with the specifications of Title 24 whenever each such “alteration, structural repair or addition” was carried out. On information and belief, defendants and/or their predecessors in interest carried out alterations, structural repairs, or additions to the building during the period Title 24 has been in effect. On information and belief, alterations, structural repairs, or additions which triggered access requirements also occurred between July 1, 1970 and July 1, 1982, and required access pursuant to the A.S.A. (American Standards Association) Regulations then in effect, pursuant to the incorporated provisions of California Government Code §§ 4450ff.

11. **FACTUAL STATEMENT:** On or about May 12, 2007, plaintiff NICOLE BROWN-BOOKER went to the Apple Store at One Stockton Street in San Francisco, to buy a computer game for her nephew’s birthday. She entered the Store in her motorized wheelchair and went up to the second floor by way of an elevator. The elevator was hard to find because it was not clearly marked. She was not able to press the buttons of the elevator because they were improperly located out of her reach from her wheelchair, and so an Apple employee pressed

1 the button for her. She maneuvered toward the children's games, but was unable
2 to turn around in her wheelchair in front of the shelves where they were located,
3 so she had to repeatedly maneuver away from the games, around another display
4 area, and back to look at the games. She was unable to reach the games because
5 they were located on a shelf that was more than five feet above the ground. She
6 noticed that there was a display area where children were playing some of the
7 computer games on display at the Store, and tried to see which games they were
8 playing, but the display was too low to view from her wheelchair vantage point.

9 12. Plaintiff Brown-Booker waited for an Apple employee to assist her,
10 but twenty minutes passed and no one asked her if she needed any assistance.
11 Finally, a customer who had also been browsing the children's games offered to
12 take two games off the shelf for her. Another ten minutes passed before a second
13 customer asked her if she needed help, and took down a third game for her, which
14 she decided to purchase. When plaintiff went to the cash register to pay for the
15 game, she spoke with an Apple employee about her inability to reach the
16 computers or the computer games. He told her that there were some computers
17 located on a lower shelf, and looked for them, but was unable to identify them or
18 tell her where they were located. He told her that "maybe" they were on the first
19 floor. She began paying for her computer game and found that she was unable to
20 reach the credit card machine to sign for her purchase, so the store clerk had to
21 crawl under the counter, untangle some wires and pull the credit card machine off
22 the counter toward her. Other customers were waiting behind her and this
23 attracted unwanted attention. After plaintiff Brown-Booker paid, she proceeded
24 to the first floor, hoping to find an accessible computer where she could test the
25 software she was hoping to buy for her Macintosh computer, but none of the
26 display tables were accessible to her. Most of the computers on the first floor
27 were positioned on tables where a customer would have to be able to stand or sit
28 on a high stool to use them, and plaintiff was physically unable to do so due to

1 her disability. She noticed some computers located on somewhat lower tables, but
2 they were still too high for her to use, and other computers apparently intended
3 for use by children, like those on the second floor, were too low for her view or
4 use. Plaintiff Brown-Booker left the Store feeling frustrated, angry, and
5 humiliated that her shopping errand had proved so difficult because many
6 features of the Store were inaccessible to her. She was also frustrated that the
7 Store apparently did not have a policy for employees to assist disabled persons,
8 and that no employee offered to help her, leaving her to rely on customers in the
9 Store to help her view the merchandise.

10 13. Plaintiff Jana Overbo, also a person with a disability, who also uses a
11 motorized wheelchair, returned to the Apple Store with plaintiff Nikki Brown-
12 Booker on July 28, 2007. Plaintiff Jana Overbo had previously made an
13 appointment to visit the "genius bar" at the Apple Store because she was having
14 trouble with her keyboard and some software on her computer wasn't running
15 properly. The "genius bar" is an area of the Store where Apple employees assist
16 customers in identifying and fixing computer hardware or software problems.
17 Plaintiff Jana Overbo had difficulty getting up to the second floor because there
18 were trash and large objects blocking the path of travel to the elevator. Once she
19 was inside the elevator, Ms. Overbo realized that she could not reach the buttons
20 because they were improperly located for disabled use. An Apple employee was
21 also in the elevator and so he pressed the button for her. She arrived 45 minutes
22 early for her 3:10 appointment, and tried to let someone know she was there by
23 going from one end of the "genius" bar to the other shouting, "Hello, I'm here for
24 my appointment." She could see the screen on which the appointments were
25 listed and her name came up but she didn't know how to let any one know she
26 was there. After some time, one of the clerks noticed her and took her to the end
27 of the bar which appeared to have been lowered for wheelchair users. However,
28 there was a large desktop computer taking up the lowered counter space and so

1 she was unable to look at the computer with the technical support staff. (Other
2 customers were able to look at their computer screens with technical support staff
3 because they could place their computers on the same counter as the staff use to
4 inspect or fix the computer.) As a result, it was not until she got home that she
5 was able to determine that the Apple employee had not properly fixed the
6 software problem she described, even though he had said he had "fixed" it.

7 14. Plaintiff Jana Overbo also hoped to purchase some Spanish language
8 software while she was at the Store, but she could not reach any of the software.
9 She felt like she was invisible because no Store clerk took any notice of her.
10 Finally a customer helped her to look at some of the software, and waited for her
11 to choose something. With the customer's help, she also chose some business
12 card design software. When it came time for her to pay for the software and the
13 keyboard cover she had chosen, one of the staff members offered to ring her up
14 for her purchases at the "genius bar." If she had been able to reach other items in
15 the Store, Jana would have looked at and tried out the Mac Book Pro and the I-
16 phone, which were on display for customers to try, but both of these items were
17 locked down on tables at a height that made it impossible for her to reach them.

18 15. Based on a preliminary investigation by plaintiffs' representatives after
19 the subject incident of May 12, 2007, the physical property owned and operated
20 by defendants and each of them was also constructed and maintained in an
21 inaccessible condition for use by physically disabled persons with regard to a
22 number of features which may adversely affect plaintiffs, both wheelchair users,
23 when they may attempt to return to the Store, including but not limited to the lack
24 of proper accessible seating locations at the "teaching theater" on the second
25 floor. This educational theater is used for various workshops that are held
26 throughout the day, on every day of the week, on various topics to help customers
27 understand and use computer hardware and software that is sold in the Store.
28 This area resembles a movie theater, to the extent that images are projected onto a

1 large screen and audience members sit in attached, theater-like seating, but there
2 are no accessible seats in this theater.

3 16. This public facility is inaccessible to persons with disabilities in
4 multiple aspects, including but not limited to the following: entrance, interior
5 paths of travel, service counters, public restroom, elevator, and teaching theater,
6 "genius bar," check-out counters and display counter areas, all rendering these
7 premises inaccessible to and unuseable by physically disabled persons. All
8 facilities must be brought into compliance with all applicable federal and state
9 code requirements.

10 17. Further, each and every violation of the Americans With Disabilities
11 Act of 1990 (as pled in the Third Cause of Action hereinbelow, the contents of
12 which are repled and incorporated herein, word for word, as if separately repled),
13 also constitutes a separate and distinct violation of California Civil Code §54(c),
14 thus independently justifying an award of damages and injunctive relief pursuant
15 to California law, including but not limited to Civil Code §§ 54.3 and 55.

16 18. Further, each and every violation of the Americans With Disabilities
17 Act of 1990 (as pled in the Third Cause of Action hereinbelow, the contents of
18 which are repled and incorporated herein, word for word, as if separately repled),
19 also constitutes a separate and distinct violation of California Civil Code
20 §54.1(d), thus independently justifying an award of damages and injunctive relief
21 pursuant to California law, including but not limited to Civil Code §§ 54.3 and
22 55.

23 19. **INJUNCTIVE RELIEF:** Plaintiffs seek injunctive relief to prohibit
24 the acts and omissions of defendants as complained of herein which are
25 continuing on a day-to-day basis and which have the effect of wrongfully
26 excluding plaintiffs and other members of the public who are physically disabled
27 wheelchair users from full and equal access to these public facilities. Such acts
28 and omissions are the cause of humiliation and mental and emotional suffering of

1 plaintiffs in that these actions continue to treat plaintiffs as inferior and second
2 class citizens and serve to discriminate against them on the sole basis that they are
3 persons with disabilities and require the use of a wheelchair for movement in
4 public places. Plaintiffs are unable, so long as such acts and omissions of
5 defendants continue, to achieve equal access to and use of these public buildings
6 and facilities, and cannot return to use these facilities until they are made properly
7 accessible to disabled persons. Plaintiffs allege that they intend to return and
8 patronize this Store, once legally required access has been provided. The acts of
9 defendants have proximately caused and will continue to cause irreparable injury
10 to plaintiffs if not enjoined by this Court.

11 20. Wherefore Plaintiffs ask this Court to preliminarily and permanently
12 enjoin any continuing refusal by defendants to grant full and equal access to
13 plaintiffs in the respects complained of and to require defendants to comply
14 forthwith with the applicable statutory requirements relating to access for
15 disabled persons. Such injunctive relief is provided by California Health &
16 Safety Code §19953 and California Civil Code §55, and other law. Plaintiffs
17 further request that the court award attorney fees, litigation expenses, and costs
18 pursuant to Health & Safety Code §19953, Civil Code §§ 54.3 and 55, Code of
19 Civil Procedure §1021.5 and other law, all as hereinafter prayed for.

20 21. **DAMAGES:** As a result of the denial of equal access to the facility
21 and due to the acts and omissions of defendants and each of them in owning,
22 operating, leasing, constructing, altering, and maintaining the subject facility,
23 plaintiffs suffered violations of their civil rights, including but not limited to
24 rights under Civil Code §§ 54 and 54.1, all to their damages per Civil Code §54.3,
25 including damages for physical, mental and emotional injuries, statutory damages,
26 and statutory treble damages, as hereinafter stated. Defendants' actions and
27 omissions to act constitute discrimination against plaintiffs on the sole basis that
28 they were and are physically disabled and unable, because of the architectural

1 barriers created and/or maintained by the defendants in violation of the subject
2 laws, to use the public facilities on a full and equal basis as other persons.

3 22. **FEES AND COSTS:** As a result of defendants' acts, omissions, and
4 conduct, plaintiffs have been required to incur attorney fees, litigation expenses,
5 and costs as provided by statute, in order to enforce plaintiffs' rights and to
6 enforce provisions of the law protecting access for disabled persons and
7 prohibiting discrimination against disabled persons. Plaintiffs therefore seek
8 recovery of all reasonable attorney fees, litigation expenses, and costs, pursuant
9 to the provisions of Civil Code §§ 54.3 and 55. Additionally, plaintiffs' lawsuit
10 is intended to require that defendants make their facilities accessible to all
11 disabled members of the public, justifying "public interest" attorney fees,
12 litigation expenses and costs pursuant to the provisions of California Code of
13 Civil Procedure §1021.5 and other applicable law.

14 Wherefore plaintiffs prays for relief as hereinafter stated:

15
16 **SECOND CAUSE OF ACTION:**
17 **VIOLATION OF UNRUH CIVIL RIGHTS ACT**
18 **CALIFORNIA CIVIL CODE SECTIONS 51 AND 52,**
19 **ON THE BASIS OF DISABILITY**

20 23. Plaintiffs replead and incorporate by reference, as if fully set forth
21 again herein, the factual allegations contained in Paragraphs 1 through 22, above,
22 and incorporate them herein by reference as if separately repled hereafter.

23 24. At all times herein mentioned, the Unruh Civil Rights Act, California
24 Civil Code §51(b), provided that:

25 All persons within the jurisdiction of this state are free and equal,
26 and no matter what their sex, race, color, religion, ancestry, national
27 origin, disability, or medical condition are entitled to the full and
28 equal accommodations, advantages, facilities, privileges, or services
in all business establishments of every kind whatsoever.

Per §51(f),

A violation of the right of any individual under the Americans With

1 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a
2 violation of this section.

3 25. Plaintiffs suffered damages as above described as a result of
4 defendants' violation of California Civil Code §§ 51(b) and 51(f) in multiple
5 regards, including but not limited to violations of the ADA, as described in the
6 Third Cause of Action, *infra*, the contents of which cause of action is
7 incorporated herein as if separately repled. California Civil Code §52(a) provides
8 that each such violation entitles plaintiffs to "the actual damages, and any amount
9 that may be determined by a jury, or a court sitting without a jury, up to a
10 maximum of three times the amount of actual damage but in no case less than
11 four thousand dollars (\$4,000), and any attorney's fees that may be determined by
12 the court in addition thereto..."

13 WHEREFORE, plaintiffs pray for damages and injunctive relief as
14 hereinafter stated.

15
16 **THIRD CAUSE OF ACTION:**
17 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
18 **42 USC §12101FF**

19 26. Plaintiffs replead and incorporate by reference, as if fully set forth
20 again herein, the allegations contained in Paragraphs 1 through 25 of this
21 Complaint, and incorporate them herein as if separately repled.

22 27. Pursuant to law, in 1990 the United States Congress made findings
23 per 42 USC §12101 regarding physically disabled persons, finding that laws were
24 needed to more fully protect "some 43,000,000 Americans [with] one or more
25 physical or mental disabilities;" that "historically, society has tended to isolate
26 and segregate individuals with disabilities;" that "such forms of discrimination
27 against individuals with disabilities continue to be a serious and pervasive social
28 problem;" that "the Nation's proper goals regarding individuals with disabilities
are to assure equality of opportunity, full participation, independent living, and

1 economic self-sufficiency for such individuals;" and that "the continuing
 2 existence of unfair and unnecessary discrimination and prejudice denies people
 3 with disabilities the opportunity to compete on an equal basis and to pursue those
 4 opportunities for which our free society is justifiably famous..."

5 28. Congress stated as its purpose in passing the Americans with
 6 Disabilities Act (42 USC §12101(b))

7 It is the purpose of this Act

8 (1) to provide a clear and comprehensive national mandate for the
 9 elimination of discrimination against individuals with disabilities;

10 (2) to provide clear, strong, consistent, enforceable standards addressing
 discrimination against individuals with disabilities;

11 (3) to ensure that the Federal Government plays a central role in enforcing
 12 the standards established in this Act on behalf of individuals with
 disabilities; and

13 (4) to invoke the sweep of congressional authority, including the power to
 14 enforce the fourteenth amendment and to regulate commerce, in order to
 address the major areas of discrimination faced day-to-day by people with
 15 disabilities. (Emphasis added)

16 29. As part of the Americans with Disabilities Act, Public Law 101-336,
 17 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations
 18 and Services Operated by Private Entities" (42 USC 12181ff). The subject
 19 property and facility is one of the "private entities" which are considered "public
 20 accommodations" for purposes of this title, per §301(7)(C), which includes any
 21 "motion picture house, theater, concert hall, stadium, or other place of public
 22 exhibition or entertainment" and per §301(7)(E), which includes any "bakery,
 23 grocery store, clothing store, hardware store, shopping center, or other sales or
 24 rental establishment."

25 30. Pursuant to §302, 42 USC §12182, "No individual shall be
 26 discriminated against on the basis of disability in the full and equal enjoyment of
 27 the goods, services, facilities, privileges, advantages, or accommodations of any
 28 place of public accommodation by any person who owns, leases, or leases to, or

1 operates a place of public accommodation.”

2 31. Among the specific prohibitions against discrimination were
3 included:

4 §302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,
5 practices, or procedures when such modifications are necessary to afford such
6 goods, services, facilities, privileges, advantages, or accommodations to
7 individuals with disabilities...;”

8 §302(b)(A)(iii): “a failure to take such steps as may be necessary to ensure that
9 no individual with a disability is excluded, denied service, segregated, or
10 otherwise treated differently than other individuals because of the absence of
11 auxiliary aids and services....”

12 §302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication
13 barriers that are structural in nature, in existing facilities... where such removal is
14 readily achievable;”

15 §302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier
16 under clause (iv) is not readily achievable, a failure to make such goods, services,
17 facilities, privileges, advantages, or accommodations available through
18 alternative methods if such methods are readily achievable.” The acts and
19 omissions of Defendants set forth herein were in violation of plaintiffs’ rights
20 under the ADA, Public Law 101-336, and the regulations promulgated
21 thereunder, 28 CFR Part 36ff.

22 32. The removal of each of the barriers complained of by plaintiffs as
23 hereinabove alleged, were at all times herein mentioned “readily achievable”
24 under the standards of the Americans With Disabilities Act. As noted
25 hereinabove, removal of each and every one of the architectural barriers
26 complained of herein were also required under California law. Further, on
27 information and belief, alterations, structural repairs or additions since January
28 26, 1992 have also independently triggered requirements for removal of barriers

1 to access for disabled persons per §303 of the ADA.

2 33. On information and belief, as of the date of plaintiffs' encounter at
3 the premises and as of the filing of this Complaint, the subject premises have
4 denied and continue to deny full and equal access to plaintiffs and to other
5 disabled persons, including wheelchair users, in other respects, which violated
6 plaintiffs' rights to full and equal access and which discriminated against
7 plaintiffs on the basis of their disabilities, thus wrongfully denying to plaintiffs
8 the full and equal enjoyment of the goods, services, facilities, privileges,
9 advantages and accommodations, in violation of §302 of the ADA, 42 USC
10 §12182.

11 34. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff,
12 §308, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of
13 the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as plaintiffs are being
14 subjected to discrimination on the basis of disability in violation of this title and
15 have reasonable grounds for believing that they are about to be subjected to
16 discrimination in violation of §302 and §303. On information and belief,
17 defendants have continued to violate the law and deny the rights of plaintiffs and
18 other disabled persons to access to this public accommodation since on or before
19 plaintiffs' encounters as previously discussed. Pursuant to §308(a)(2), "In cases
20 of violations of §302(b)(2)(A)(iv) and §303(a)... injunctive relief shall include an
21 order to alter facilities to make such facilities readily accessible to and usable by
22 individuals with disabilities to the extent required by this title."

23 35. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the
24 Civil Rights Act of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal
25 Regulations adopted to implement the Americans with Disabilities Act of 1990.
26 Plaintiffs are qualified disabled persons for purposes of §308(a) of the ADA who
27 are being subjected to discrimination on the basis of disability in violation of
28 Title III and who have reasonable grounds for believing they will be subjected to

1 such discrimination each time that they may attempt to use the property and
2 premises.

3 Wherefore plaintiffs prays for relief as hereinafter stated:

4
5 PRAYER

6 Plaintiffs pray that this Court:

7 1. Issue a preliminary and permanent injunction directing defendants as
8 current owners, operators, lessors, and/or lessees of the property and premises to
9 modify the above described property and premises and related facilities so that
10 each provides full and equal access to all persons, including persons with
11 physical disabilities who use a wheelchair; and issue a preliminary and permanent
12 injunction directing defendants to provide facilities usable by plaintiffs and
13 similarly situated persons with disabilities, and which provide full and equal
14 access, as required by law, including appropriate changes in policy;

15 2. Retain jurisdiction over the defendants until such time as the Court is
16 satisfied that defendants' unlawful policies, practices, acts and omissions, and
17 maintenance of inaccessible public facilities as complained of herein no longer
18 occur, and can not recur; -

19 3. Award to plaintiffs all appropriate damages, including but not
20 limited to statutory damages, general damages and treble damages in an amount
21 within the jurisdiction of the Court, all according to proof;

22 4. Award to plaintiffs all reasonable statutory attorney fees, litigation
23 expenses, and costs of this proceeding as provided by law;

24 5. For prejudgment interest pursuant to California Civil Code § 3291;

25 6. Grant such other and further relief as this Court may deem just and
26 proper.

27 //

28 //

1 Dated: August 24, 2007

PAUL L. REIN
JULIE A. OSTIL
ANN WINTERMAN
LAW OFFICES OF PAUL L. REIN

4 

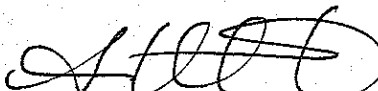
Attorneys for Plaintiffs
NICOLE BROWN-BOOKER and
JANA OVERBO

10 **DEMAND FOR JURY**

11 Plaintiffs hereby demand a jury for all claims for which a jury is
12 permitted.

14 Dated: August 24, 2007

PAUL L. REIN
JULIE A. OSTIL
ANN WINTERMAN
LAW OFFICES OF PAUL L. REIN

17 

Attorneys for Plaintiffs
NICOLE BROWN-BOOKER and
JANA OVERBO